

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 3, 2007

STATE OF TENNESSEE v. AUDRA LYNN JOHNSON

**Direct Appeal from the Circuit Court for Montgomery County
No. 40400784 Michael R. Jones, Judge**

No. M2007-00824-CCA-R3-CD - Filed November 13, 2007

The appellant, Audra Lynn Johnson, appeals the Montgomery County Circuit Court's denial of the Motion for Return of Funds she filed in an attempt to have the Board of Probation and Parole reimburse her for probation fees she paid before this court reversed her conviction for reckless homicide. Upon review of the record and the parties' briefs, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JERRY L. SMITH and ALAN E. GLENN, JJ., joined.

Roger E. Nell, Clarksville, Tennessee, for the appellant, Audra Lynn Johnson.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; John Wesley Carney, Jr., District Attorney General; and C. Daniel Brollier, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

According to the direct appeal opinion this court filed in the appellant's case, the appellant was indicted for second degree murder after she unlawfully distributed a controlled substance to the victim in Indiana and he died two days later in Clarksville, Tennessee. State v. Audra Lynn Johnson, No. M2005-02855-CCA-R3-CD, 2006 Tenn. Crim. App. LEXIS 933, **2-3 (Nashville, Nov. 21, 2006). The appellant pled nolo contendere to reckless homicide and received a six-year sentence to be served on probation. Id. at *2. As part of the plea agreement, she reserved a certified question of law as to whether the trial court lacked territorial jurisdiction over her case. Id. at *2-3. This court subsequently held that the trial court lacked territorial jurisdiction, vacated the appellant's conviction, and dismissed the indictment. Id. at *19.

On February 5, 2007, the appellant filed a Motion for Return of Funds in the Montgomery County Circuit Court, asking that any money she had paid to the Tennessee Board of Probation and Parole or any other agency be returned to her. In a written order, the trial court denied the motion, stating as follows:

The defendant did not request at the time of the entry of her plea that her sentence be stayed. No bond was required for the appeal since she did not request a stay of her probated sentence. The court has researched this issue and has found no authority or any case in which this issue has been addressed. The indictment has been dismissed. This court has no case before it. The court believes that it has no jurisdiction to grant the motion even though it would be fair under the circumstances to require the fees be returned.¹

The appellant timely appealed to this court, asking that the trial court's denial of the motion be reversed.

II. Analysis

The appellant contends that this court should reverse the trial court because "[t]he trial court, having earlier asserted jurisdiction where it had none, now wishes to avail itself of this Court's ruling [and] continue to deprive Mrs. Johnson of her property claiming lack of jurisdiction to grant her relief." However, we conclude that the trial court properly denied the motion. According to an attorney general opinion,

Fines and court costs paid to the State may be recovered only through the Board of Claims. The catch-all provision, Tenn. Code Ann. § 9-8-101(c), reserves to the Board jurisdiction over all claims not specifically directed to the Tennessee Claims Commission, Tenn. Code Ann. § 9-8-307. The judicial branch may not give judgment against the State in this regard. Hill v. Beeler, 199 Tenn. 325, 286 S.W.2d 868 (1956).

Restitution is of two (2) types. Restitution per Tenn. Code Ann. § 40-20-116 is ordered by a criminal court jury as compensatory damages to be paid by a convicted defendant to the victim of a property crime and is a civil judgment; hence, defendant's recovery must come from the victim. Restitution paid as a requisite of pre-trial diversion, sentencing, probation, or parole, is part of the punishment by the State, regardless of to whom defendant makes payment. See

¹ According to the order, the appellant was seeking a refund for "supervision fees" paid to the Tennessee Board of Probation and Parole.

generally, Kelly v. Robinson, 479 U.S. 36, 107 S. Ct. 353, 93 L. Ed. 2d 216 (1986). Recovery for such restitution must come from the Board of Claims per Tenn. Code Ann. § 9-8-101(c).

Op. Tenn. Att’y Gen. 88-111 (June 6, 1988).

In State v. Warren Sego, No. 02C01-9411-CC-00244, 1995 Tenn. Crim. App. LEXIS 646, at *1 (Jackson, Aug. 2, 1995), the defendant was convicted of two counts of false pretense and was ordered to pay restitution to the City of Trenton. The defendant made restitution payments while his appeal was pending. Id. at *2. On direct appeal, this court reversed the appellant’s convictions, and he filed a petition in the convicting court to be reimbursed for the restitution already paid. Id. at **1-2. The convicting court denied the petition, suggesting that the appellant proceed civilly. Id. at *2. This court affirmed the trial court’s judgment, stating, “Whether the City of Trenton is legally indebted to the Appellant for the amount the Appellant paid as restitution is a dispute or question which is civil in nature.” Id. at *5. Based upon the attorney general’s opinion and this court’s holding in State v. Warren Sego, we conclude that the trial court properly dismissed the appellant’s motion for reimbursement of her probation fees because the trial court was without jurisdiction to order such relief.

III. Conclusion

Based upon the record and the parties’ briefs, we affirm the judgment of the trial court.

NORMA McGEE OGLE, JUDGE